

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

SEPRACOR, INC.,	)	
	)	
Plaintiff,	)	
Counterclaim-Defendant	)	C.A. No. 06-113-***
	)	(Consolidated)
	)	
v.	)	
	)	<b>REDACTED</b>
DEY, L.P. and DEY, INC.,	)	<b>PUBLIC VERSION</b>
	)	
Defendants,	)	
Counterclaim-Plaintiffs.	)	
	)	

**UNOPPOSED MOTION FOR ISSUANCE OF REQUEST FOR INTERNATIONAL  
JUDICIAL ASSISTANCE, PURSUANT TO THE HAGUE CONVENTION OF 18  
MARCH 1970 ON THE TAKING OF EVIDENCE IN CIVIL OR COMMERCIAL  
MATTERS, TO TAKE EVIDENCE FROM JOHN MORLEY, PH.D.**

Defendants Dey L.P. and Dey, Inc. (“Dey”) hereby respectfully moves the Court to execute the attached Letter of Request for International Judicial Assistance Pursuant to the Hague Convention of 18 March 1970 on Taking of Evidence in Civil or Commercial Matters, pursuant to 28 U.S.C. §1781 and Federal Rule of Civil Procedure 28(b)(2) (Ex. 1), for the purpose of taking testimony from John Morley, Ph.D. Plaintiff, Sepracor, Inc., does not oppose this request.

Dey also respectfully requests this Court to order pursuant to paragraph 2(g) of the Protective Order in these consolidated cases that the British Court, Dey’s United Kingdom counsel, SJ Berwin LLP and barrister, James Mellor and Dr. Morley’s United Kingdom counsel have access to Confidential Information contained in documents necessary for this request and for the deposition of Dr. Morley.

In support of this motion, Dey notes that significant issue exists as to the novelty of the invention disclosed in patents at issue, and as to inventorship. Therefore, Dey wishes to obtain evidence for trial from one witness in Cambridgeshire, U.K. This witness is a former consultant for Sepracor Inc. who is believed by Dey to have carried out research on  $\beta_2$  adrenaceptor agonists including the enantiomers of albuterol. The evidence to be taken for trial concerns:

1. Dr. Morley's work relating to albuterol and the isomers of albuterol;
2. Dr. Morley's relationship with Sepracor and the consultancy work he has undertaken for Sepracor relating to albuterol and the isomers of albuterol;
3. Dr. Morley's research leading up to the filing of Great Britain Patent Application No. 9107196.9 filed April 5, 1991 and U.S. Patent Application No. 07/862,907 entitled "Use of  $\beta_2$  Sympathomimetic Bronchodilator Drugs on Inflammatory Airways Disease"; and
4. Dr. Morley's understanding of the circumstances leading up to the January 1995 assignment from Sandoz to Sepracor of U.S. Patent Application No. 08/223,798 filed April 6, 1994, which claims priority from Great Britain Patent Application No. 9107196.9 filed April 5, 1991.
5. The identification and authentication of certain documents written by Dr. Morley including but not limited to the document attached hereto as Exhibit 2.

WHEREFORE, Dey respectfully request that the Court grant this motion and issue the attached Letter of Request.

ASHBY & GEDDES

*/s/ Tiffany Geyer Lydon*

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Dated: September 18, 2007  
184191.1

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v.	)	
	)	
DEY, L.P. and DEY, INC.,	)	
	)	
Defendants,	)	
Counterclaim-Plaintiffs.	)	

**ORDER**

This matter comes before the Court upon Dey's unopposed Motion to Issue a Letter of Request for International Judicial Assistance. Having reviewed the motion, and being fully advised in the premises, the Court grants Dey's motion for a Letter of Request for International Judicial Assistance, requesting assistance from the appropriate judicial authority of the United Kingdom to take the deposition of John Morley, Ph.D. The executed Letter of Request with the Seal of the Court is attached. Defendants shall forward the Letter of Request and any and all necessary copies to the appropriate authorities.

The Court further orders that pursuant to paragraph 2(g) of the Protective Order entered in these consolidated cases, that the British Court, Dey's United Kingdom counsel, namely, S. J. Berwin LLP and James Mellor, and Dr. Morley's United Kingdom counsel to have access to

Confidential Information contained in documents necessary for this request and for the deposition of Dr. Morley.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
United States District Judge

**EXHIBITS 1 & 2**

**REDACTED IN  
THEIR ENTIRETY**